УДК 346. 44

LEGAL FACTS IN THE DOCTRINE OF CIVIL LAW

Mariana PLENIUK,
Institute of Private Law and Entrepreneur ip named after the academician F.G. Burchak
of the National Academy of Sciences of Ukraine

SUMMARY

In the article the author analyzes the concept of legal facts in the civil law doctrine comes to the conclusion that the definition of legal facts for today indiwidualiziruyutza some special characteristics, because the environment from which they come from legal facts is life itself, therefore, there are legal facts to the needs of legal practice, the realities of human life, society and the state.

Key words: fact, legal facts, legal rules in civil matters.

АНОТАЦІЯ

У статті автор, аналізуючи поняття юридичних фактів у доктрині цивільного права, доходить висновку, що дефініція юридичних фактів на сьогодні індивідуалізується деякими особливими ознаками, адже середовищем, із якого походять юридичні факти, є саме життя, тому виникають юридичні факти з потреб юридичної практики, реалій життєдіяльності людини, суспільства й держави.

Ключові слова: факт, юридичні факти, правові норми, цивільні правовідносини.

The theory of legal facts cannot be called in one of the new law, because roots reach back to the history of Roman law[1]. However, the jurists of that period failed to form the general understanding of the legal fact, as we know that this "merit" has been given to V. Savigny. As in his time, a German lawyer, A. Manyhk, once said that A.B. Savigny, working on a reinterpretation of Roman law and its systematic exposition, for the first time said that the events that cause the occurrence or termination of relationship should be called legal facts [1, c. 847].

Initial development of the theory of legal facts is connected with civil law. It is based on the works of scientists like G. Dernburha, R. Zoma, G. Puhta A. Ton, T. Tsytelmana, L. Ennektserusa, common understanding of the theory of legal facts was consisted.

Given the fact that the category of «legal fact»was emerged and developed from practical needs (of property rights, inheritance rights, individual binding relationships, etc.), the basis for determining undoubtedly lay the understanding that the concept should only cover various specific prerequisites movement relations. It is this idea of legal work was imbued with Russian scientists, in particular: E. Vaskovskoho, D. Grimm, N. Korkunov, V. Sinai, G. Shershenevich and others.

The basis for the development of the theme of the article were the works of S. Alekseev, V. Isakov, A. Krasavchykov, N. Kuznetsova, R. Maidanyk, V. Lutsya, and E. Kharitonov.

The aim of this scientific publication is to highlight the notion of legal fact in the doctrine of civil law of Ukraine in modern times.

At one time, L. Petrazhitsky, pointing to unilateralism formal dogmatic jurisprudence, its tendency to "legal mystery" has provided his legal facts, subjective and psychological treatment. Under the legal facts, according to scientists, it is understood, above all, not external, objective and entirely imaginary event as important and one that is crucial to the legal life, is not the fact of the contract itself, and the belief in the existence of this fact [2, p. 458]. However, this position was not a scholar perception of the scientific community of the time, because this understanding of legal facts negates the importance of legal facts in the legal system [3, p. 73]. J. Baron has defined legal facts as all sorts of circumstances that have a certain legal consequence, emergence, transfer, suspension, maintaining or changing the law [4, p. 104].

In academic writings of E. Vaskovskoho we meet that "the circumstances that give the rise to changes in the rights, are called legal facts (facta) and can be conducted by the will of interested person(eg contract), or be independent of it (such as expiry death). In the first case they are called legal actions, and the second legal events" [5]. O. Krasavchykov in his scientific study "Legal facts in Soviet civil law" was considering legal facts as facts of reality, objective facts, phenomena that exist independently of our consciousness. Existing objectivly, legal facts in nature and content of products can be conscious activity. Such, for example, as "legal action" and "legal fact – it is a fact of reality, which are associated with a current law, modification or termination of civil relations" [6, p. 45].

S. Alekseev [7] spoke about legal fact as the specific circumstances on which the rule of law binds the emergence, change and termination of relationships. Instead S. Kechekyan argued that the legal facts – these are facts or events, with the presence of law which is associated the onset defined legal consequences [8].

According to N. Aleksandrov, vital facts by themselves have inherent properties or may not be legal facts, they become legal facts when they are given such significance by law. Because the facts,as scientist alleged, of the same species may or may not be legal, it depends on how they are regarded into a law by the will of the ruling class [9, p. 163].

In turn, M. Rozhkova said that civil law "securities" should be recognized only those legal facts, which entail legal consequences in civil relations. Therefore, defining the concept of legal fact, the academic lays the understanding into the foundation of real life situations and stresses that the definition should incorporate the following features: (1) consolidation of the rule of law of the abstract model of the circumstances with the advent of which the certain legal consequences are associate; (2) actual (real) occurrence of circumstances; (3) the opportunity to produce legal effects. On this basis, the researcher argues that under a legal fact in the civil law should understand the real circumstances, the legal model which civil law connects certain legal consequences and the actual occurrence of which entail such consequences in the field of civil relations [10, p. 14].

[1] В Інституція Гая їх налічувалось чотири: контракт, квазіконтракт, делікт, квазіделікт. Пізніше почали виділяти й односторонню угоду.

Proving its position on the legal facts R. Bevzenko emphasizes that the notion of legal fact should be excluded the reference to the relationship as an indispensable legal consequence which is arising under the influence of the existence of legal fact. Herewith the scientist emphasizes that not the fact generates legal consequences, but only in conjunction with the norm of law [11, p. 352].

Analyzing theoretical legacy we can conclude that the jurisprudence has been developing the theory of legal facts according to the level of legal culture and the need for appropriate times. The modern doctrine of civil law considers the legal facts as the components of legal life, woven into a complex network of social relations, which are caused by economic, political and social factors, ie a legal and social category. So, today, seems reasonable understanding of the legal fact as specific life circumstances in which the rules of civil law are linked the onset of legal effects and, above all, the emergence, change and termination of civil relations [12, p. 495].

Legal Facts are a general concept, so they are study in the general theory of law and legal studies in industry – civil, family, labor and so on.

Thus, the theory of law provides a definition of the legal facts under which legal facts are understood as the specific social circumstances (events, actions) that cause under the law onset of certain legal effects – arising, modification or termination of legal relations. It is made the specification that the notion of legal fact combines two points: (1) material – the phenomenon of reality (event or action); (2) Law that creates in view of the guidelines of the law certain legal consequences [13, p. 160].

According to Mr. Rabinovich, a legal fact provides legal standard hypothesis, the particular circumstances of the onset of which occurs, change or terminate legal relationship [14, p. 68]. The textbook "Civil Law of Ukraine. Chapeau" edited by A. Dzeru, legal facts are identified as specific life circumstances in which the rules of civil law are linked the onset of legal effects and, above all, the emergence, change and termination of civil relations [15, p. 495]. Scientists of Kharkiv school argue that the civil relationships are arising, changing or terminating only with the onset of certain circumstances (facts of reality) which are accounted by legislation. Thus, the facts of reality of legal facts are just the ones associated with a law, modification or termination of civil relations [16, p. 107].

A researcher in the field of family law V. Kovalska says that under legal facts in family law should understand the specific life circumstances, legal structure of which is provided or acceptable by family legal norm, the onset of which causes legal effects on family relationships (appearance, change, suspension, preventing or restoring) and (or) on family law (emergence, expansion, suspension or restriction) [17, p. 4].

Given the fact that the legal facts are phenomena of reality that exists objectively, regardless of relationship to this person should understand that there is no legal facts of the future, ie legal facts at the time of analysis have already existed in the past. Moreover, as it was noted by O. Otradnova, each legal fact should be given with the specific characteristics [18, p. 96]. Agreeing with the opinion of the author, we can only complement that today the effectiveness of the mechanism of legal regulation depends largely on the ability of legislators to feel «keep abreast» the existence of social relations, as a general source of legal facts is a social reality. As rightly noted by A. Kostruba, with the reforms which are taking place in society, a subject of legal regulation and legal facts remains the same. Some relationships and life circumstances of life disappear, while others, conversely, are born, mature, get more complete legal registration [19, p. 31].

We know that the very notion of legal fact combines two closely related points: physical and legal. On the one hand, the phenomenon of reality – an event or action. This means the material, but rather "real" fact. On the other hand, a fact that under the law, creates corresponding legal effects and therefore cannot be just a "fact of reality" and is considered as a legal fact. According to this criterion, A. Markosyan characterizes the legal facts, calling the phenomena that exist independently of our consciousness, as material legal facts [20, p. 11]. For these, G. Kikot rightly notes that the legal facts are facts that carry information about the state of social relations, which are the subject of legal regulation, and only those circumstances that directly or indirectly affect the rights and interests of the individual, society, state social and public entities [21, p. 30].

According to V. Andronova, legal facts – this is the area of the law where the law face life, with a particular reality. Thus, the legal facts allow to bring relationship to the level of actual relationship problems, study to show a link legal relations of Sociology, Management and other social sciences [22, p. 150]. Mr. Yakushev determines legal facts as socially caused by specific life circumstances that are the subject of legal regulation, directly or indirectly, under the law, the presence or absence of generating consequences which have been prescribed by law: emergence, change, termination of relationship between personally-defined entities [23, p. 147].

Given that there are two signs in the contractual relationship, we join a group of scientists who are considering legal facts through the theory component of double the legal nature of the latter. According to which the concept of legal fact includes interconnected and interdependent phenomena, namely: 1) the specific situation of reality, that real action or event; 2) their legal structure, which is reflected in the system of laws.

So, the look at the legal nature of the legal fact in terms of dual component will allow not only to outline the definition of legal fact, but also to present the relationship as a legal fact as an objective aspects of reality with the legal structure. Moreover, the legal separation of fact and legal construction of legal fact will allow to conclude that the particular legal fact is not a random phenomenon, but a phenomenon generated by a specific legal system, which depends on the level of legislation, perfection of legal construction.

As for the other attributes in the binding legal facts of the relationship, in the literature they are also called as regulative [24, p. 3]. Life facts (circumstances) are not legal in themselves, not because of any special properties and not the will of the members of the life process but as a result of recognition of such by State and by the fixing corresponding the law [25, p. 6]. Agreeing with the above in general, we note that the rule of law provides only a general rule for all cases, citing legal structure. So in the sense of "legal fact, under the law" is appropriate to understand the "legal structure of legal fact".

The circumstances that arise in the daily activities of people and certainly affect the development of their relations in the absence of appropriate structures in the law, does not entail any legal consequences, since they are not considered as legal. Legal facts should be considered only those life circumstances, whose legal regulatory structure is fixed. The statutory legal structures of legal facts may be of two reasons. Firstly, the legal facts are directly specified in the law as the basis of modification and termination of relationship, and, secondly, the practice of law is repleted with cases where judicial authorities have to solve disputes with the relationships that arise from legal facts that are not directly specified in the law. In these cases usually turn to Art. 8 Central Committee of Ukraine, the rules of which point to the analogy of law or analogy of law in civil matters. It should be said that this approach is justified not only in terms of practice, but science in general, since the possibility of the right analogy regulated legal norms, and therefore the onset of legal consequences in the analogy meets all legal requirements. We agree with the opinion of A. Krasavchykova that legislation

cannot and should not regulate absolutely all kinds of public relations, because public relations is constantly evolving; and for certain types of relationships, it has no need of a special regulation [6, p. 36–37]. We should add that sometimes detailed regulation of certain relations in general seems impossible, especially if these relationships are personal.

Thus, legal importance have both the legal construction of legal facts which are directly anticipated by certain provisions of the law and those that do not anticipate a certain rate, but have indirect regulation and are used under similar law or the law. Examples are the contractual obligations arising from treatieswhich are not named [26, p. 3].

Given that the "fact" means real action or real, nonfictional event, a real phenomenon; what happened, actually happened [27, p. 780], the legal facts are not only a problem of theoretical science, but also practical problem. After all, the theory of legal facts is directly related to solving practical problems of jurisprudence. After all, the enforcement authority must not only establish the necessary legal proceedings to address the facts, but also qualify them correctly. Incorrect legal assessment of the facts leads to the fact that one of the circumstances is not granted proper legal significance, others, on the contrary, they are attributed to unusual quality. Therefore, V. Isakov said that the ability to «work» with the facts – a legal and factual culture – is necessary element of common legal culture [3, p. 9].

Thus, the analysis of the concept of legal facts let to make the conclusion that though there is no concept of legal facts in civil law, this definition has found its place in civil doctrine. Because legal facts which arise from the needs of the realities of human life, society and state, and are one of the main elements of the mechanism of legal regulation, which is to work properly, should be based on a solid foundation.

Referinţe bibliografice:

1. Manigk A. Tatsachen, yuristische – Handworterbuch der Rechtswissenschaft / A. Manigk. – B. 5. – Berlin und Leipzig, 1928. – S 847.

2. Петражицький Л.И. Теория права и государства в связи с теорией нравственности / Л. И. Петражицкий. – 2-е изд. – СПб., 1910. – Т. 2. – 1910. – С. 458–459.

3. Исаков В.Б. Юридические факты в советском праве / В.Б. Исаков. – М. : Юридическая литература, 1984. – 144 с.

4. Барон Ю. Система римского гражданского права / Ю. Барон. – 3-е изд. – Вып. 1. – СПб., 1909. – Кн. 1 : Общая часть. – 1909. – С. 104.

5. Васьковский Б.В. Учебник гражданского права / Е.В. Васьковский. – СПб. : Книж. маг. Н.К. Мартынова, 1894. – 168 с.

6. Красавчиков О.А. Юридические факты в советском гражданском праве / О.А. Красавчиков. – М. : Госюриздат, 1958. – 184 с.

7. Алексеев С.С. Право: азбука – теория – философия: опыт комплексного исследования / С.С. Алексеев. – М. : Статут, 1999. – 712 с.

8. Кечекьян С.Ф. Правоотношения в социалистическом обществе / С.Ф. Кечекьян. – М. : АН СССР, 1958. – 186 с.

9. Александров Н.Г. Законность и правоотношения в советском обществе / Н.Г. Александров. – М., 1955. – С. 163.

10. Рожкова М.А. Юридические факты гражданского и процессуального права: соглашения о защите прав и процессуальные соглашения / М.А. Рожкова ; Исслед. центр частного права. – М. : Статут, 2009. – 332 с. – С. 6.

11. Бевзенко Р.С. Теория юридических фактов / Р.С. Бевзенко // Гражданское право: актуальные проблемы теории и практики / под общ. ред. В.А. Белова. – М. : Юрайт, 2009. – С. 352.

12. Цивільне право України. Загальна частина : [підручник] / за ред. О.В. Дзери, Н.С. Кузнєцової, Р.А. Майданика. – 3-є вид. – К. : Юрінком Інтер, 2010. – С. 495.

13. Теорія держави і права : [підручник] / за ред. В.К. Бабаєва. – М. : МАУП, 2003. – С. 160.

14. Рабінович П.М. Основи загальної теорії права та держави : [навчальний посібник] / П. М. Рабинович. – 5-те вид., зі змінами. – К. : Атіка, 2001. – С. 68.

15. Цивільне право України. Загальна частина : [підручник] / за ред. О.В. Дзери, Н.С. Кузнєцової, Р.А. Майданика. – 3-тє вид. – К. : Юрінком Інтер, 2010. – С. 495.

16. Цивільне право : [підручник] : у 2 т. / [В.І. Борисова (кер. авт. кол), Л.М. Баранова, Т.І. Бєгова та ін.] ; за ред. В.І. Борисової, І.В. Спасибо-Фатєєвої, В.Л. Яроцького. – Х. : Право, 2011. – Т. 1. – 2011. – 656 с. – С. 107.

17. Ковальська В.С. Юридичний факт як підстава зміни та припинення сімейних правовідносин : автореф. дис. … канд. юрид. наук : спец. 12.00.03 / В.С. Ковальська. – Одеса, 2013. – С. 4.

18. Отраднова О.О. Проблеми вдосконалення механізму цивільно-правового регулювання деліктних зобов'язань : [монографія] / О.О. Отраднова. – К. : Юрінком Інтер, 2014. – С. 96.

19. Коструба А.В. Юридичні факти в механізмі правоприпинення цивільних відносин : [монографія] / А.В. Коструба. – К. : Ін Юре, 2014. – С. 31.

20. Маркосян А.В. Юридические факты в семейном праве Российской Федерации : автореф. дисс. … канд. юрид. наук : спец. 12.00.03 / А.В. Маркосян. – М., 2007. – 24 с.

21. Кикоть Г. Проблема класифікації юридичних фактів у сучасній теорії права / Г. Кикоть // Право України. – 2003. – № 7. – С. 30.

22. Андронова В.А. Юридичні факти у трудовому праві: поняття, ознаки та властивості / В.А. Андронова // Актуальні проблеми держави і права : збірник наукових праць. – Вип. 58. – Одеса : Юридична література, 2011. – С. 149–154.

23. Якушев П.А. Правообразующие юридические акты и поступки в механизме правового регулирования : дисс. ... канд. юрид. наук : спец. 12.00.01 «Теория и история права и государства; история правовых учений» / П.А. Якушев. – М., 2004. – 165 с.

24. Маркосян А.В. Юридические факты в семейном праве Российской Федерации : автореф. дисс. … канд. юрид. наук : спец. 12.00.03 / А.В. Маркосян. – М., 2007. – 24 с.

25. Данилин В.И. Юридические факты в советском семейном праве / В.И. Данилин, С.И. Реутов. – Свердловск : Изд-во Урал. ун-та, 1989. – 156 с.

26. Мигалюк Л.В. Непойменовані договори в цивільному праві України : автореф. дис. … канд. юрид. наук : спец. 12.00.03 / Л.В. Мигалюк. – К. : НДІ приватного права і підприємництва ім. акад. Ф.Г. Бурчака, 2013. – 20 с.

27. Новий тлумачний словник української мови : у 3 т. / укл.: проф. В.В. Яременко та ін. – К. : Аконіт, 2003. – Т. 3. – 2003. – С. 780.